

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Minority Television Project, Inc.)	
v.)	CSR-6304-M
Comcast Cable Communications, Inc.)	
)	
Request for Carriage and Emergency Relief)	

MEMORANDUM OPINION AND ORDER

Adopted: July 6, 2004

Released: July 9, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Minority Television Project, Inc., licensee of noncommercial television station KMTP (Ch. 32), San Francisco, California ("KMTP"), filed the above-captioned complaint against Comcast Cable Communications, Inc. ("Comcast"), operator of a cable system serving the community of Santa Cruz, California, for unlawfully removing KMTP from carriage on its system, in violation of Section 76.56 of the Commission's rules. An opposition to this complaint has been filed by Comcast to which KMTP has replied. For the reasons discussed below, we deny KMTP's complaint.

II. BACKGROUND

2. Pursuant to Section 615 of the Communications Act¹ and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, ("Must Carry Order"),² noncommercial educational broadcast ("NCE") stations are entitled to assert mandatory carriage rights on cable systems when either the predicted Grade B contour of the NCE station encompasses the principal headend of the cable system or when the city of license of the NCE station is located within 50 miles of said principal headend.³

III. DISCUSSION

3. In support of its complaint, KMTP states Comcast unlawfully terminated carriage of its signal based on the assertion that the principal headend of the Santa Cruz system appeared to be located

¹47 U.S.C. § 535.

²8 FCC Rcd 2965, 2966-2971 (1993).

³47 C.F.R. § 76.56.

outside of KMTP's predicted Grade B contour.⁴ KMTP states that, by letter dated November 14, 2003, Comcast advised KMTP that it would be deleted from the Santa Cruz system unless the station could "once again provide a good quality signal to the Santa Cruz headend."⁵ KMTP indicates that after it responded to Comcast, stating that it would provide whatever equipment was necessary to ensure the receipt of a good quality signal, Comcast replied that KMTP was not entitled to mandatory carriage on the Santa Cruz system because the cable system headend was not within KMTP's predicted Grade B contour.⁶ KMTP maintains that, as shown by a map prepared by an engineering firm, the Santa Cruz headend is clearly within KMTP's predicted Grade B contour.⁷ Moreover, KMTP argues that, up until the time that KION-DT began causing interference to its signal, Comcast expressed no complaints as to the signal quality received from KMTP.⁸

4. In opposition, Comcast argues that the complaint should be denied because KMTP fails to meet fundamental eligibility requirements for NCE must carry. First, Comcast points out that KMTP does not deliver a signal of sufficient strength to the cable system headend.⁹ Comcast notes that Section 615(g)(4) of the Act states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission."¹⁰ Comcast states that tests that it conducted of KMTP's signal fell well below the standard provided for in the Commission's rules.¹¹ Second, Comcast argues that, despite its claims, KMTP is not a local NCE television station pursuant to Section 76.55(b)(1) and (2) of the rules.¹² Comcast states that the principal headend for the Santa Cruz system is located at 106 Whispering Pines Drive, Scotts Valley, California, and the distance between this location and KMTP's city of license exceeds the statutorily-mandated 50 miles.¹³ In addition, Comcast states that KMTP's Grade B contour does not encompass the Santa Cruz headend.¹⁴ Comcast notes that although KMTP claims to have submitted a map with its complaint that clearly showed that the station's Grade B contour encompassed the principal headend of the system, Comcast maintains that KMTP improperly depicted the location of the principal headend

⁴Complaint at Exhibit 1. KMTP states that it has simultaneously filed a "Complaint of Harmful Interference and Request for Emergency Relief" against digital television station KION-DT ("Interference Complaint"). KMTP raises similar issues of interference in the complaint herein. We note, however, that this is not issue that is relevant to the instant complaint and, as such, we decline to make any ruling on the matter.

⁵*Id.* at Exhibit 4.

⁶*Id.* at 5 and Exhibit 5.

⁷*Id.* at Exhibit 6.

⁸*Id.* at 7.

⁹Opposition at 2.

¹⁰*Id.*, citing 47 U.S.C. § 535(g)(4); *see also* 47 C.F.R. §76.55(c)(3).

¹¹Complaint at Exhibit 1. Comcast states that it previously picked up KMTP's signal at a receive site facility located closer to KMTP and which was located at a significantly higher elevation. KMTP has not disputed its inability to deliver a sufficient signal even to that receive site facility. *See Id.* at 2 n.3 and Exhibit 2.

¹²*Id.* at 3, citing 47 C.F.R. § 76.55(b)(1) and (2).

¹³*Id.* at Exhibit 4. Comcast states that the distance is 59 miles.

¹⁴*Id.* at Exhibit 5.

serving the Santa Cruz system.¹⁵ Comcast contends that the Bureau should conclude that KMTP is not a qualified local NCE station for must carry purposes and dismiss its complaint.

5. In reply, KMTP states that its map shows the point at which the Santa Cruz system receives all broadcast signals carried by the system. Comcast apparently uses the location of an office which it claims is its headend. KMTP states its chief engineer has testified in a declaration that two Comcast employees specifically identified the Ben Lomond Mountain receive site as the “headend” of the Santa Cruz system.¹⁶ KMTP states that its engineer also testified that given the terrain factors, it is physically impossible for Comcast to receive any San Francisco television stations’ signal at the Whispering Pines site because that site is approximately 2000 feet below the apex of the Ben Lomond Mountain.¹⁷ Although Comcast claims that signal strength measurements at the receive site are irrelevant and the only tests that matter are those at the “headend”, KMTP maintains that this argument distorts the clear purpose of the Commission’s rules that require a cable system to designate a headend location.¹⁸ KMTP states that Comcast has not asserted that it does any signal processing at the Whispering Pines address. Instead, the Ben Lomond receive site is the location where the headend functions are performed and KMTP argues that it is that site that should be designated by the Commission as the headend.¹⁹ KMTP states that allowing Comcast to assert that KMTP is no longer a must carry signal, contravenes the clear intent of the Commission’s must carry and grandfathering provisions.

6. In a supplemental response filed by Comcast, the cable system argues that the Whispering Pines Lane location has been the designated principal headend for the Santa Cruz system since at least 1988 and is the point at which all of the system’s signals are processed for distribution to Comcast’s subscribers.²⁰ Comcast states that the Ben Lomond Mountain site has never been designated as a principal headend and is merely one of 3 different receive sites utilized by the cable system.²¹ Comcast notes that the vast majority of its subscribers are located in Santa Cruz and the surrounding communities to the south of the Whispering Pines location, while the Ben Lomond receive site lies to north where there are only a relatively small number of subscribers.²² Finally, Comcast notes the fact that the Whispering Pines location cannot receive San Francisco stations is immaterial. Santa Cruz is located in Salinas-Monterey DMA and San Francisco stations would therefore not be entitled to must carry status in that market.

7. We agree that the information provided by Comcast establishes that its headend is located at Whispering Pines Lane and that KMTP does not have must carry rights on the Santa Cruz system as its predicted Grade B contour does not encompass Comcast’s principal headend and that KMTP’s city of license is located more than 50 miles away.

¹⁵*Id.* at 4.

¹⁶*See* Declaration of Russ Brown, Chief Engineer of KMTP.

¹⁷*Id.* at Elevation Profile.

¹⁸Reply at 3.

¹⁹*Id.*

²⁰Supplemental Reply at Exhibit 1.

²¹*Id.* at Exhibits 1 and 2.

²²*Id.* at 3.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the must carry complaint filed by Minority Television Project, Inc. **IS DENIED** pursuant to Section 615 of the Communications Act of 1934, as amended, 47 U.S.C. § 535.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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²³47 C.F.R. § 0.283.